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IN THE
COURT OF APPEALS OF INDIANA

RYAN J. HAYNES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 66A03-0609-CR-397
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE PULASKI CIRCUIT COURT
The Honorable Michael A. Shurn, Judge
Cause No. 66C01-0503-FA-5

May 11, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Ryan Haynes appeals the denial of his motion to suppress. We affirm.

Issue

The restated issue is whether the trial court properly refused to suppress evidence recovered during a warrantless search of Haynes's vehicle.

Facts

On March 6, 2005, Haynes was driving on County Road 100 North in Pulaski County with a passenger whose last name was Gourley.[1] Indiana State Police Master Trooper Bernard Rausch, who was off duty and not wearing a uniform or driving a marked vehicle, observed Haynes's car and noticed that the passenger kept looking back at him, but he did not observe any erratic driving or illegal conduct. Haynes's vehicle then turned into the Winamac Fish and Wildlife Area ("Winamac"). Trooper Rausch continued home, got into his marked vehicle (but not his uniform), and drove back to Winamac. He wanted to investigate whether the occupants of the vehicle were engaged in any illegal conduct. Based on personal experience, Trooper Rausch knew that the parking lots at Winamac frequently were used for illegal activity.

Trooper Rausch located Haynes's vehicle in a parking lot and pulled up beside it. However, he did not block in Haynes's vehicle, nor did he activate his emergency lights. When Trooper Rausch got out of his marked car, he noticed Gourley make a quick, sudden movement toward the floor of the car. Fearful that Gourley might have been

[1] Gourley's first name is not in the record.

reaching for a weapon, Trooper Rausch ordered Gourley and Haynes to put their hands up, which they did. Trooper Rausch then walked to the passenger side of Haynes's car, opened the door, and saw a glass pipe that appeared to contain a burnt residue lying on the floor of the car in plain view; he also noticed an unusual burning odor coming from the vehicle.

Trooper Rausch believed, based on his training and experience, that the pipe was used for smoking illegal drugs, and he decided to arrest both Haynes and Gourley for possession of paraphernalia. After giving Haynes Miranda warnings, Trooper Rausch asked if there were any weapons or illegal drugs in the car. Haynes said there were drugs under the driver's seat. When Trooper Rausch looked there, he found a box that contained three bags containing a white powder that turned out to be methamphetamine and one bag of marijuana.

The State charged Haynes with three counts of Class A felony dealing in methamphetamine, one count of Class A misdemeanor possession of marijuana, and one count of Class A misdemeanor possession of paraphernalia. Haynes filed a motion to suppress the evidence recovered by Trooper Rausch from his vehicle. On June 26, 2006, the trial court denied the motion to suppress. The trial court certified its ruling for interlocutory appeal, and this court has agreed to accept jurisdiction over it.

Analysis

We review the denial of a motion to suppress in a manner similar to other sufficiency matters and must determine whether substantial evidence of probative value exists to support the denial of the motion. Richardson v. State, 848 N.E.2d 1097, 1100

(Ind. Ct. App. 2006), trans. denied. We do not reweigh the evidence, and we consider conflicting evidence in a light most favorable to the trial court's ruling. Id. at 1100-01. However, unlike the typical sufficiency of the evidence case where only the evidence favorable to the judgment is considered, we also will consider uncontested evidence that is favorable to the defendant. Id. at 1101. We may affirm the judgment of the trial court on any legal grounds apparent in the record. Id.

Haynes's sole argument is that Trooper Rausch's initial approach towards his vehicle constituted an illegal seizure, thus rendering the subsequent search of the vehicle also illegal. This court has noted that there are basically three levels of police investigation, two that implicate the Fourth Amendment and one that does not.[2]

> First, the Fourth Amendment requires that an arrest or detention for more than a short period be justified by probable cause. Probable cause to arrest exists where the facts and circumstances within the knowledge of the officers are sufficient to warrant a belief by a person of reasonable caution that an offense has been committed and that the person to be arrested has committed it. Second, it is well-settled Fourth Amendment jurisprudence that police may, without a warrant or probable cause, briefly detain an individual for investigatory purposes if, based on specific and articulable facts, the officer has a reasonable suspicion that criminal activity "may be afoot." Accordingly, limited investigatory stops and seizures on the street involving a brief question or two and a possible frisk for weapons can be justified by mere reasonable suspicion. Finally, the third level of investigation occurs when a law enforcement officer makes a casual and brief inquiry of a citizen which involves

[2] Although Haynes mentions Article 1, Section 11 of the Indiana Constitution in his brief, he fails to provide a separate analysis under that provision. Therefore, his state constitutional claim is waived and we consider only the Fourth Amendment. See Wilson v. State, 745 N.E.2d 789, 791 n.2 (Ind. 2001).

> neither an arrest nor a stop. In this type of "consensual encounter" no Fourth Amendment interest is implicated.

Overstreet v. State, 724 N.E.2d 661, 663 (Ind. Ct. App. 2000), trans. denied.

"Not every encounter between a police officer and a citizen amounts to a seizure requiring objective justification." Id. A person is "seized" only when, by means of physical force or a show of authority, his or her freedom of movement is restrained. State v. Lefevers, 844 N.E.2d 508, 513 (Ind. Ct. App. 2006), trans. denied (citing United States v. Mendenhall, 446 U.S. 544, 553, 100 S. Ct. 1870, 1877 (1980)). "Examples of circumstances that might indicate a seizure where the person did not actually attempt to leave the scene would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." Id. If such evidence is lacking, otherwise inoffensive contact between a member of the public and the police does not amount to a seizure of that person. Id.

In Overstreet, we held there was no "stop" or "seizure" of a defendant where the defendant pulled into a gas station and was fueling his vehicle, and an officer pulled his vehicle behind the defendant without activating the lights, approached him, asked for identification, and questioned him about some suspicious activity the officer had observed. Overstreet, 724 N.E.2d at 664. Similarly, in Lefevers, we held the defendant was not "seized" when, of her own volition, she pulled into a convenience store parking lot and a police officer parked nearby without activating his emergency lights, got out of his vehicle, and began talking to the defendant in a non-threatening way. Lefevers, 844

N.E.2d at 513. Thus, in both Overstreet and Lefevers, the police officer did not have to possess reasonable suspicion of wrongdoing when they first started talking to the defendants. Likewise, here Trooper Rausch did not have to possess any reasonable suspicion of wrongdoing in order to park beside Haynes's vehicle without activating his emergency lights or blocking Haynes's car and to get out of his police cruiser for the purpose of talking to Haynes and Gourley.[3]

However, when Trooper Rausch placed his hand on his gun and ordered Haynes and Gourley to raise their hands, it would appear that a seizure had occurred that must be justified by reasonable suspicion of possible wrongdoing. We review a determination of reasonable suspicion de novo. Id. at 515. Reasonable suspicion exists if the facts known to an officer and the reasonable inferences therefrom would cause an ordinarily prudent person to believe that criminal activity has or is about to occur. Id. "Although reasonable suspicion requires more than inchoate and unparticularized hunches, it is a less demanding standard than probable cause and requires considerably less proof than that required to establish wrongdoing by a preponderance of the evidence." Id. A reasonable suspicion determination is made on a case-by-case basis by looking at the totality of the circumstances. Id.

[3] Haynes essentially testified that Trooper Rausch blocked him into the parking lot, but Trooper Rausch testified that Haynes could have backed out. We resolve this conflict in the evidence in favor of the State and the trial court's ruling.

Furthermore, "The Fourth Amendment allows privacy interests protected by the Fourth Amendment to be balanced against the interests of officer safety." Wilson v. State, 745 N.E.2d 789, 792 (Ind. 2001). As the Supreme Court has said:

> there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.

Terry v. Ohio, 392 U.S. 1, 27, 88 S. Ct. 1868, 1883 (1968).

Here, Trooper Rausch first had observed Gourley repeatedly looking back at his vehicle while driving on County Road 100 North, which he found especially odd given that he was not in uniform or driving a marked vehicle at the time. Then, Trooper Rausch located Haynes's vehicle in a place that he knew, from personal experience, was frequently a site of illegal activity. Finally, Trooper Rausch observed Gourley make a furtive gesture when he began to approach Haynes's vehicle, quickly reaching toward the floor of the car, that caused him to fear for his safety.

Given the totality of the circumstances—Gourely's nervousness, presence in a known high crime area, and furtive gesture—we believe Trooper Rausch possessed sufficient reasonable suspicion of possible criminal activity, or more specifically the possibility of a threat to his safety, to seize Haynes and Gourley at that point by commanding them to put their hands in the air. See Illinois v. Wardlow, 528 U.S. 119, 124, 120 S. Ct. 673, 676 (2000) (holding that presence in high crime area, combined with

nervousness and evasive behavior, are pertinent factors in determining reasonable suspicion). Moreover, the determination of reasonable suspicion must be based on common sense judgments and inferences about human behavior and cannot be made with scientific certainty. Id. at 125, 120 S. Ct. at 676. Trooper Rausch made an appropriate common sense judgment in ordering Haynes and Gourley to put their hands in the air and in opening the passenger door of Haynes's car so he could ascertain whether there was a weapon inside of it. Haynes does not argue that the glass pipe Trooper Rausch discovered was not in plain view, that it did not provide probable cause to arrest Haynes, or that the discovery of the methamphetamine and marijuana was the result of an improper search, regardless of the propriety of the initial investigatory seizure. The trial court did not err in denying Haynes's motion to suppress.

Conclusion

The trial court properly denied Haynes's motion to suppress. We affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.